

An auctioneer acting on behalf of an unknown or undisclosed principal is responsible for Retailers' Occupation Tax on the gross receipts from the sale. However, if the auctioneer is acting on behalf of a known or disclosed principal, the sale of tangible personal property is taxable to the principal and not the auctioneer if the principal is a retailer of the tangible personal property personal property being sold at the auction. See 86 Ill. Adm. Code 130.1915. (This is a GIL.)

January 26, 2001

Dear Xxxxx:

This letter is in response to your letter received by our office on December 18, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing about the taxability on items that are sold at an auction.

We are an auction company who holds various auctions in Illinois during the year.

I am trying to verify if the following is taxable at an Auction:

1. If we are auctioning off all of the assets of a facility that is closing
2. If we are auctioning off all of the manufacturing equipment at a facility that is closing

Also, I was told by PERSON at Illinois Dept. of Revenue that Section 130.110 allows us not to tax items if they are sold as part facility closing where we are selling the manufacturing equipment. She also stated that we did not have to report this sale at all to Illinois, is that true.

Please fax me the response or Call me. You can also mail the response to XXXXX.

As noted in the Department's regulation governing auctioneers and agents, see 86 Ill. Adm. Code 130.1915, enclosed, an auctioneer acting on behalf of an unknown or undisclosed principal is considered to be the owner of the tangible personal property that will be auctioned and is responsible for Retailers' Occupation Tax on the gross receipts from the sale.

However, if the auctioneer is acting on behalf of a known or disclosed principal, the sale of tangible personal property is taxable to the principal and not the auctioneer if the principal is a retailer

of the tangible personal property being sold at the auction. If the tangible personal property sold at the auction is not tangible personal property that is customarily sold in business by the disclosed principal, then the sale is not taxable because this transaction is considered an occasional sale by an occasional seller, the disclosed principal. This being the case, the Illinois purchaser incurs no corresponding Use Tax. Generally, if a manufacturer sells manufacturing machinery and equipment which he has used in his business and no longer needs, such sales are considered occasional sales. However, sales of any items that are normally sold by those manufacturers, such as inventory, are not considered occasional sales and are subject to Retailers' Occupation Tax liability. See subsection (b) of the enclosed copy of 86 Ill. Adm. Code 130.110.

A disclosed principal is one whose name and address are made known to the purchaser at or before the time of sale and whose name and address appear upon the books and records of the agent. See the enclosed copy of 86 Ill. Adm. Code 130.1915(b)(1-5) for additional information.

A retailer making a sale at retail in this State will incur Retailers' Occupation Tax liability unless that retailer can document from its books and records that such sale is exempt from taxation. Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See the enclosed copy of 86 Ill. Adm. Code 130.330. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation.

Hand tools do not qualify for the exemption. However, pneumatic hand tools or electric powered hand tools used primarily in manufacturing or assembling may qualify for the exemption. Please note that the use of machinery and equipment to convey, handle, or transport tangible personal property to be sold within production stations on production lines or directly between such production stations or buildings within the same plant qualifies for the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code 130.330(d)(3)(D).

This manufacturing machinery and equipment exemption does not extend, however, to machinery or equipment used to store, convey, handle or transport materials or parts or sub-assemblies prior to their entrance into the production cycle. See Section 130.330(d)(4)(C). Nor does the exemption extend to machinery or equipment used to store, convey, handle or transport finished tangible personal property after the completion of the production cycle. See Section 130.330(d)(4)(D).

In order to document the exemption, the purchaser of such machinery and equipment must supply an exemption certificate to the retailer as provided in 86 Ill. Adm. Code 130.330(g)(1). Form ST-587, the Machinery and Equipment Exemption Certificate, can be used to claim the exemption. The retailer must retain the certificate in its books and records to properly document the exemption.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.